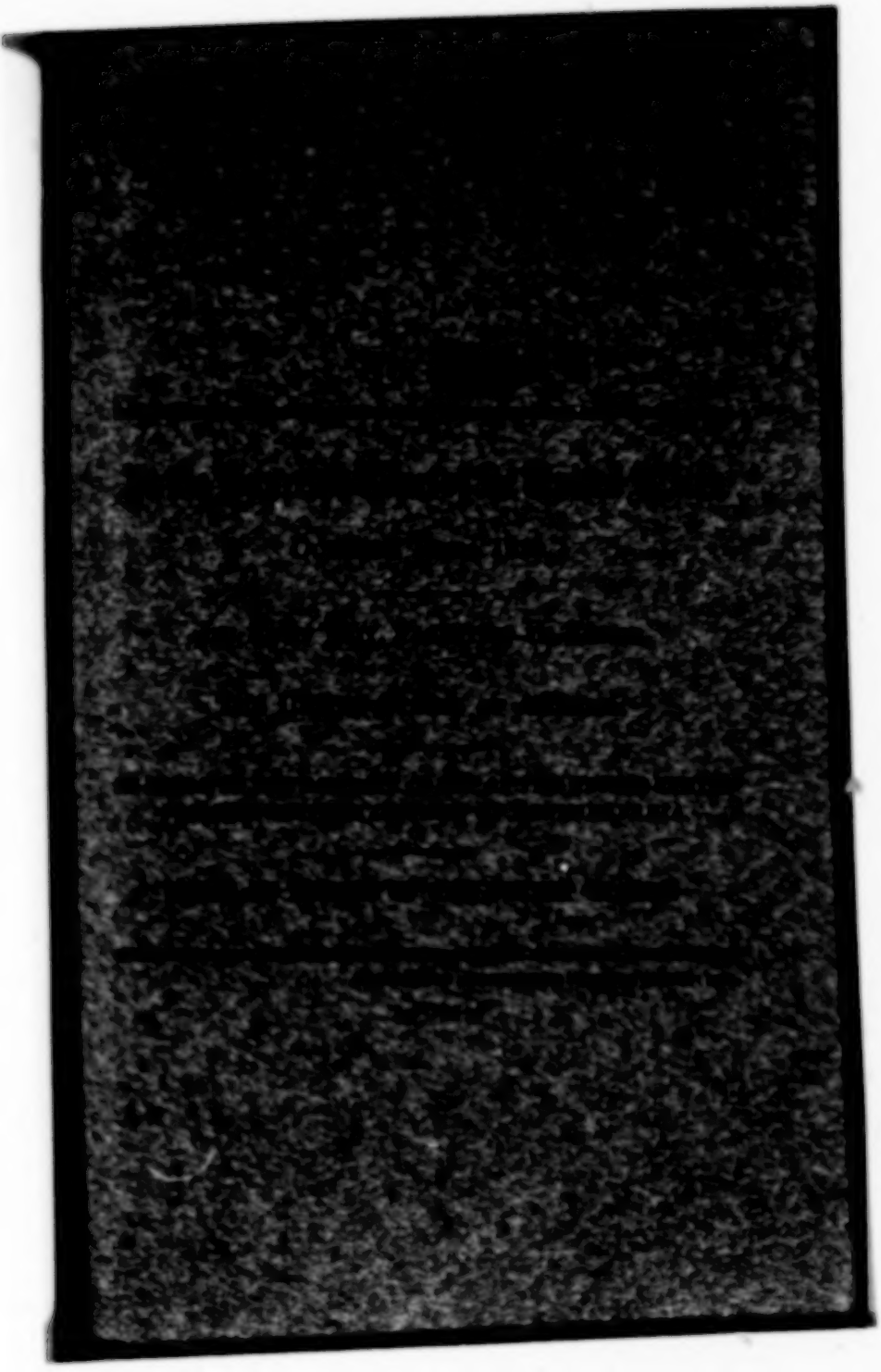

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

JIN FUEY MOY, PLAINTIFF IN ERROR
v.
THE UNITED STATES OF AMERICA. } No. 161.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

The plaintiff in error was convicted of a violation of section 2 of the so-called Harrison narcotic act of December 17, 1914, c. 1, 38 Stat. 785; Comp. Stat. sec. 6287h, in that he sold, dispensed, and distributed a derivative of opium—morphine sulphate—not in pursuance of a written order on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, but by means of a pretended prescription given, not in the course of his professional practice, to a person who was not his patient (R. 3, 4). (See *Webb* v. *United States*, 249 U. S. 96, 99, 100.)

The record in the case shows that defendant was indicted for twenty separate transactions, in which it

is charged the defendant Moy did unlawfully, wilfully, knowingly, and feloniously sell, barter, exchange, give away, dispense, and distribute under twenty different prescriptions, issued at different times from March 25, 1917, to May 8, 1917, an aggregate of 255 drams of morphine sulphate, and issued and dispensed the same to the parties named by issuing to each of the parties, under each of said transactions, prescriptions for said morphine sulphate, the parties not being patients of the said Moy, and the said Moy not acting in the course of his professional practice only. (R. 3–22.)

The evidence in said case showed that all of these prescriptions were filled at the drug store of the Joseph Fleming & Son Company (R. 27, 39–42). A dram contains sixty grains, or one-eighth of an ounce. The ordinary dose to alleviate pain is from one-twelfth to one-quarter of a grain (R. 29). The largest amount which the Government physician testified he had given to an addict was about twenty grains a day, generally less (R. 39). The evidence further showed that when a party desired to get morphine and went to the store of Fleming he was directed to Moy to obtain a proper ticket (R. 53); and when he went to Moy he was told to go to the Fleming Drug Company to get the morphine, and that they did business together (R. 57); also that the prescriptions were paid for according to the quantity of morphine therein at the rate of $1.00 for each one-eighth of an ounce (R. 57).

The very large extent of the sales and distribution of morphine made by Dr. Moy through prescriptions filled at the drug store of the Joseph Fleming & Sons Company within a space of about two years, the same aggregating 15,796 drams of sulphate of morphine, is shown on Record pages 117–120.

The writ of error in this case was allowed on February 6, 1918 (R. 178.)

ARGUMENT.

The case is brought here on the ground that the narcotic act is unconstitutional. (See plaintiff in error's brief, pp. 13–14.) This is expressly stated in the first four points stated under the head "Questions presented to this honorable court for decision." It is also the question presented under the fifth and sixth points, as shown by the brief on pages 23 *et seq.*

That these acts are constitutional, and that the questions herein involved are settled by the decision of this court, is plain. (*United States* v. *Doremus*, 249 U. S. 86; *Webb et al.* v. *United States*, 249 U. S. 96.)

The point raised upon the indictment likewise is settled by these cases. The point (R. 21; brief pp. 2–3 *et seq.*) raised is that Dr. Moy is not guilty of furnishing morphine in violation of the act to one who did not present an order therefor on forms issued by the Commissioner of Internal Revenue, because the provisions of the act, when required in the case of a registered physician, although he is not treating a patient or prescribing in the course of his legitimate professional business, are not legitimate provisions

intended to promote the lawful purposes of the statute, but are an invasion of the police powers of the State (see brief, pp. 23 *et seq.*).

The indictment clearly charges that Moy was dispensing or otherwise disposing of morphine to persons not patients, and not in the line of practice of physicians, through the means of prescriptions. How this could be done is made perfectly clear by the uncontradicted evidence in the case which demonstrates that by this means he was disposing of, dispensing, distributing, and selling morphine in the hands of Fleming & Company, charging therefor, according to the volume of drug stated in the prescription, a substantial purchase price based upon the quantity of drug and not upon the medical skill or advice but as an act of participation in the disposition of the drug.

The sole question made by the plaintiff in error is that the indictment does not charge an offense because, where a physician has registered and issues prescriptions *under any circumstances*, to require of him not to dispose of drugs through prescriptions, or otherwise, to persons not under his treatment as patients or in the course of his practice, is an unlawful invasion of the police powers of the State, and that therefore no violation of the act is shown.

That such prescriptions, so called, are not true prescriptions, and that the physician thus participating in the sale of the drug, like any other participant who disposes of the same otherwise than to one pre-

senting the order required, would be guilty of a violation of the act is clearly settled by the case of *Webb* v. *United States* (249 U. S. 96).

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed.

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